

Citizenship and the ‘right to education’: Perspectives from the Indian context

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1. Introduction

Across the globe, inequalities in educational access and achievement, as well as high levels of absolute educational deprivation of both children and adults persist, despite decades of attempts for solutions. Most recently, the ‘right’ to education is increasingly invoked in the language and approaches of many development actors concerned with addressing these persisting inequalities, yet few concrete steps to realise this right have been taken. The challenges relate both to conceptualising ‘rights’ and what they mean in relation to education, and to enabling substantive mechanisms and strategies to make them real. Central to overcoming both types of challenge are the voices of citizens, and recognition of the multiple identities and social hierarchies within which citizenship is played out in different contexts.

In assessing the scope for developing a rights approach in education, it is important to recognise the prior policy spaces and discourses within which rights are being promoted. The experience of compulsory education legislation in different countries offers an insight into some of the difficulties that rights based approaches are likely to face, being as they are in some ways the legislative precursor to a ‘justiciable’¹ rights approach. Whilst compulsory education policies have in many countries served to ensure progress towards universalisation of elementary education, they have framed citizen presence within education systems in terms of ‘duties’ rather than ‘rights’, without necessarily invoking any of the attendant ideas of citizenship, accountability and voice that a ‘rights’ approach requires. ‘Compulsory’ education suggests a punitive approach to non-participation in education, rather than highlighting the mutual accountability of education provider and participant, state and citizen. Participation in such an approach views entry into and retention within schools as a sufficient indicator of policy success, rather than recognising the role that citizens could play in shaping or questioning the very nature of the education that is on offer. Several questions arise as a consequence: how can rights to and responsibilities in education be framed and structured to ensure full and meaningful participation in education? What roles can different institutions play in protecting rights, and also stimulating fair and equitable public debate? How can the focus on ‘enforcement’ of compulsory education be recast to enable consensual yet substantive participation in education? And fundamentally, how do conventional understandings of the ‘public good’ aspects of education need to be recast to enable a shift towards placing the citizen at the centre of policy approaches, rather than as the means towards the achievement of predetermined policy ends?

Many of these questions require further refinement when placed in the context of current global and macro economic trends. The shift towards rights based approaches is taking place at a significant point in the wider social development agenda. Discourses and approaches relating to the universalisation of education nest uneasily within economic

¹ Rights, such as the right to education in India discussed in this paper, that are embedded in the Constitution, and enacted into legal rights that are enforceable in a court of law.

and policy environments that are observing a fragmentation of public provision systems and increasing inequalities within education as greater numbers of children enter schooling systems. Economic policies of the 1980s substantially weakened the ability of governments to provide education, eroding the quality of education on offer, debilitating teacher morale, and also significantly undermining the capacity of poor households to invest in education (Malhotra 2000). While efforts to bring education back into the mainstream of policy attention have received a considerable financial boost in the 1990s and beyond, largely fuelled by global economic shifts that necessitate a skilled workforce, concerns with equity and participation still remain, as do questions about the nature and substance of education curricula that are on offer. The rise of private provision in many countries where education is far from universal further complicates the picture, dividing populations by social group of race, caste, class and gender, clustering the most disadvantaged in inadequate public schools and further eroding wider public interest in the state of public schools. The haste to achieve 'education for all' has been interpreted in policy terms as race of numbers, rather than a shift towards the creation of the kind of education system that can embrace diverse groups, and acknowledge and address economic constraints that limit participation in education. Thus the discussion on making rights real in education requires both country and local contextualisation, and also analysis of the wider economic trends within which the right is sought to be realised.

Some of these debates will be explored in a preliminary way in this paper, in relation particularly to the recent 93rd Constitutional Amendment in India, which makes elementary education a fundamental right for India's children. After much advocacy and activism, the Bill was passed in December 2001,² although with dilution of many of the aspects considered necessary for substantiating the right. As a first step towards translating Constitutional guarantees of the right to education into a legislated policy framework, this amendment has been hailed as historic. However, some of the limitations both in discourse and approach are explored below, with a view to assessing the prospects of achieving citizens' participation in education systems as a matter of right rather than as merely a duty towards the nation-state. A shift from duties alone to rights with duties also means recasting citizenship 'as an expression of human agency in the political arena' (Lister 1998:228), rather than merely in terms of the relationship between subject and state.

2. The right to education in India: implications and challenges

The enactment of the fundamental right to education, still in Parliamentary process but widely expected to become reality soon, is ambitious for a country that has witnessed decades of policy failure to make operational the rhetoric of free and compulsory elementary education for all children until the age of 14. Education has been neither free nor compulsory. For the state to guarantee education provision through a legislative enactment is a major shift, given a history of provision which has consistently failed disadvantaged groups, privileging the interests of a minority urban elite. About 110 million children remain out of the schooling system, and about 60% of those who enrol

² The Bill has been passed in the Lower House of Parliament, and as on January 22, is awaiting sanction from the Upper House. Once passed, the right to education will become incorporated into the Constitution and enacted into a legislative Act. The Bill was brought into being as a result of concerted civil society lobbying, which gave rise to the formation of a coalition called the National Alliance for the Fundamental Right to Education (NAFRE), as well as the actions of the United Front Government (1996-98) which placed education as a central aspect of its Common Minimum Programme (NAFRE 1998).

in school drop out by grade 8 (Wadhwa 2001). As studies have consistently shown over time, those excluded continue to reflect inequalities within the wider social, economic and political fabric, particularly those of caste, class, and gender. Axes of inclusion are broadly predicted around the following occupational and social classifications – children of the upper castes or from smaller families, or from households that are economically better off or dependent on non-agricultural occupations, with parents who are better educated, or from villages that have better access to schools (Vaidyanathan and Nair 2001) – thus underlining the roles played by social position, economic opportunity and the power exercised by local community leadership in securing state provided resources in education. Cutting right across these axes is the gender gap, which is more or less consistent across social groups.³

The gap between discourse and operational framework in all policy efforts in education, and more widely development, has long been cited as a reason for India's poor performance in securing equitable educational opportunity for all. Despite a range of commitments made in the Indian Constitution to equality, addressing the historical disadvantage faced by certain groups, and universal education, policies on the ground have done little to fulfil the ambitious vision developed at the birth of the modern Indian nation-state. This gap appears in danger of persisting, even with the shift to guaranteeing the right to education. In this section, some of the issues raised by the current approach are explored.

The horse or the cart? An important question is whether policy is shaped by the broader vision set by the 'right', or whether the right is seen as framed by the dictates and limitations of existing policy processes and approaches. It appears that the 93rd Amendment has yoked the vision of 'rights' to pre-existing government policy obligations and objectives in the education sector. While a landmark Supreme Court judgement⁴ had concluded that education was a fundamental component of the 'right to life', and hence the right to live with 'human dignity', such a broad vision has been limited in the Amendment to reflect the more pragmatic concerns of the state, such as the question of how it will manage to fund and provide for such a guarantee to all its children starting as it is from a deficit in providing sufficient schools to cover existing unserved areas. The impact of this has been to circumscribe the meaning and scope of the 'right', including limiting the focus of the legislation to the age-group 6-14, rather than all children under the age of 14, which both international law, and earlier Supreme Court judgements stipulate (Mehendale 1998a). The gender bias of this age specification is clear: it leaves out of the ambit provision of early learning facilities for children under the age of six, thus leaving intact the social pressures that result in girls being withdrawn or excluded from schooling to care for younger siblings (Wadhwa 2001). Further, as Mehendale (1998a) notes, this restricts the scope of education to elementary education alone, rather than envisaging education as part of wider processes of lifelong learning, excluding from its purview both adult education and early childhood education programmes.

³ In 1994, female education lagged behind male education rates by an average of 25.5 percentage points for the country as a whole. This statistic masks significant regional disparities in progress towards gender equality in education (Sudarshan 2000).

⁴ The 1993 Supreme Court verdict in the Unnikrishnan vs. State of Andhra Pradesh (1SCC/645/1993) was considered a landmark as it not only interpreted education as a 'right' but also affirmed the duty of the State in creating the conditions for this right to be secured. As the Supreme Court judgement is binding on all courts within the territory of India, education was effectively declared a Fundamental Right (Mehendale 1998b). The 93rd Constitutional Amendment is intended to make this right justiciable; instead it appears to reduce the scope of the right, contravening some aspects of the Unnikrishnan judgement.

Further implications of such an approach include the concern that resource availability will continue to shape the education policy agenda, much as it did in earlier policy eras, rather than allowing funding levels and resource mobilisation for education to be determined by the scope of requirements for enabling a rights approach. Financial allocations for education have consistently fallen short of the 6% of GDP level that has long been deemed necessary for India's ambitious educational programme to be achieved. As a result, and also as an outcome of the policy focus on rapidly increasing the numbers of children with access to school, alternative government schools have been set up in areas unserved or poorly served, with a new cadre of teachers, who are less qualified, less well-paid and with fewer rights as employees than teachers in the mainstream of the government system (Kumar et al. 2000). Inequalities within the education system appear set to continue and exacerbate as funding levels stay below that required to provide all children with equitable standards of education.

Whose agenda? Such attempts to restrict the responsibility of the state in respect of the right to elementary education may well be defended as necessarily pragmatic, particularly for holding the state accountable to an agenda it can reasonably be expected to implement. However, limited definitions of rights may also result in leaving powers relating to the right vested strongly in the state. For instance, a caveat has been introduced stating that education for 6-14 year-olds would be provided 'in such a manner as the state shall, by law, determine' (Wadhwa 2001), leaving open the question of achievement of equity in standard and quality of education provided through the rapid expansion of the system required to get all children into school. Citizens' rights to education are thus likely to be strongly circumscribed by the State's own definitions of what it considers to be an achievable rate of progress, which is only recently and slowly gathering speed. It also leaves intact and off-limits any questioning of the State's policy priorities and approaches within its universal education strategy. Thus any means by which the state chooses to make education available are to be considered the fulfilment of its duties vis-à-vis citizens' rights to education, rather than allowing for transparency and accountability in ensuring equity in access to good quality education provision. Mehendale (1998a) also points out that existing legal provisions on education have served largely to protect certain student rights *within* education institutions, such as protection from abuse, discrimination and maltreatment. While there has been litigation on these aspects, they reinforce state control and authority to frame policy; thus only some rights have been accorded recognition within a pre-set policy agenda.

Is the private public? In a context where private schooling is on the rise (Kingdon 1996, Kaul 1998), it is noteworthy that the Constitutional Amendment permits exclusion of private schools from the responsibility of providing free and compulsory education to children, thereby exempting them from the wider public policy framework of education, and emphasising the divergence between private and public schools. As Mehendale (1998a) notes, given that many private schools receive some amount of public subsidy in the form of tax exemption and other benefits, it is particularly problematic that they have been left out of the remit. A recent study from Jaipur city notes that conducive conditions exist for the rise of private schools, *de facto* through the state's under-provision of adequate facilities, and also *de jure* through the ease of procedures to acquire permits to start schools, and the fact that in primary schooling, registration is optional for owners and managers of private schools (NIAS 2001). This is a situation echoed across the country.

The state is also increasingly turning to private sector organisations, and encouraging financial contributions from citizens towards education funding. Incentives include tax exemptions for donations, sponsorship schemes, and the naming of educational institutions after their benefactors on payment of a stipulated sum of money.⁵ Without any apparent guiding framework or principles to ensure redistribution of resources *between* different types of schools, inequities in the availability of resources and infrastructure between different kinds of schools are likely to increase, creating an active market for education despite state protestations to the contrary. There are schools that are totally private and unregistered, those that are government aided though privately managed, those that are run by community organisations along religious or caste lines, those within the government sector that are alternative or mainstream, and a range of schools provided by NGOs. How these different types of educational institutions will be brought under the purview of the right to education is not clear.

By law alone? Despite some of the limitations identified above in relation to the definitional framework of the right to education bill in India, the broad principle of making rights justiciable is to be broadly welcomed. However, the legalism of the ‘right’ can only be a starting point. Strategies for holding the state accountable cannot be restricted to legal challenges, although they are a very important mechanism for asserting citizen voice. The delays and procedural complexities in the Indian justice system would entail a huge commitment of organisations’ or individuals’ time and resources, which thus means that this is a strategy to be used selectively and strategically. Problems of institutional access would curtail the ability of rights-deprived groups to effectively challenge the state. A further dimension of these limitations is the issue of enforcement, and penalty. If it is parents’ duty to send their children to school as the Amendment envisages, then how is this to be enforced? Punitive sanctions in a context of widespread exclusion are counterproductive; if so many people are outside of the education system it is clear that it is a reflection of the fact that both the system and the living conditions of those outside of it require attention.

One size fits all? Numerous studies have shown that a variety of factors arising from economic vulnerability, insecure livelihoods, social discrimination and political marginalisation combine in pernicious ways to shape patterns of education disadvantage in India. Schools also function as sites of inclusion and exclusion, and education policy itself can further help define who is included or excluded from education. Children of migrant families provide an excellent example of the ways in which diverse factors combine to limit opportunities for education (see Kratli 2001). Economic vulnerability can lead many families to adopt a variety of migration strategies, which either include or exclude children. Some families may migrate with working age children who can obtain some work alongside their parents; others may leave young children behind depending on the availability of reliable childcare. Migration strategies are not always routine, predictable events. Schools, however, work within fixed calendars, regardless of the economic context within which they operate. Children who migrate with their families are not always allowed access to schools in other areas; even where they are, access to schools does not mean that they are treated with equal respect as other students from the locality. Their parents are unlikely to be able to insist on equal treatment, as their own

⁵Indian Express (2002) ‘Donate and get a school in your name’ January 3, Mumbai. A new fund, the Bharat Shiksha Kosh, has been set up to receive funding from the public for the education sector.

political entitlements are likely to be weak, and hence not enforceable; and teachers are unlikely to be able to focus on the quality of learning of children who face disruptions in their schooling, both on account of poor teacher training as well as the difficulties of multi-grade teaching, which is the system in most rural government schools. Problems of learning are compounded by the different mediums of instruction in operation in different states of the country.

The issue of language reflects one aspect of the challenge of inclusion within the boundaries of the nation-state, and an enormous challenge for education in particular. Analyses of curricula further reveal the extent to which diverse groups are under-represented in accounts of society found in textbooks and in schooling processes. Talib (1998) documents the different ways in which both teachers and the curriculum combine to reinforce the superiority of intellectual forms of labour over manual labour, thereby authorising different hierarchies between economic classes and castes. He argues that inequalities and differences are naturalised through their presentation as ‘realities’ but in a way that leaves no room for engagement with those dichotomies and differences, thereby leaving them unchallenged and hence intact. The implications for poor and working class children are alienation from school and schooling, and their active participation in creating ‘the conditions wherein they drop out or fail in the examination’ (ibid., p.200).

The debate on education inclusion and exclusion can also focus solely on schools, obscuring from vision the fact that many groups may ‘choose’ to exclude themselves based on their analysis of the usefulness of the education that is available in terms of their own requirements, whether defined in economic, social or political terms. This throws up several challenges for rights approaches. How can the ‘right to education’ be made meaningful in the context of fluid economic strategies, especially where these strategies reflect different opportunities available to different groups of citizens? How can the right to livelihoods be achieved without compromising children’s right to education? Can children’s work, and waged work in particular, be eliminated without compromising the economic position of poor households? Without reference to these other dimensions of entitlement, education policy in itself is likely to be so narrowly conceived as to be of little relevance to precisely those groups that are persistently falling outside its purview. The indivisibility of different rights is no more apparent than in relation to education, where the ‘value’ of education can be constructed in numerous ways at different points of time by different actors, and depends so much on opportunities and freedoms in all dimensions of life.

The policy ‘black box’. Linking a ‘rights agenda’ to a narrowly conceived policy agenda raises numerous related issues, which are about the broader framing of the policy ‘black box’ (Fine and Rose 2001) in education. Dominated by the language and approaches of human capital theory, education has been increasingly viewed as a ‘public good’ with benign and positive externalities, resulting in the increase of productivity, growth and hence overall human well-being. Perspectives that raise questions about the role of education in perpetuating inequalities by privileging certain kinds of knowledge, lifestyles or values over others, are deemed to be ‘social concerns’ and hence out of the remit of the policy ‘black box’. In a discourse dominated by economic considerations, discussions on the operation of dominant forms of authority, power and privilege through educational curricula, for instance, are silenced. Education is constructed in this mode as a ‘global good’, limiting the scope for seeing the very nationally specific ways in which education agendas are framed, contested and implemented. In the Indian context, current debates on the types of ‘values’ to be imparted through the education system

represent not a benign debate about what children should be taught in schools, but an ideological tussle for determining what constitutes national identity, and whose realities most closely reflect the particular ideological agenda of the government in power.

3. Spaces and places for claiming the right to education

The 'right' to education provides a framework for accepting that basic education is an entitlement of each and every citizen regardless of religious, ethnic or caste affiliation or identity, gender or class, disability or ability. However the focus on access, as argued earlier, limits the agenda to a very narrowly framed policy agenda which is concerned more with meeting international targets for enrolment and universalisation, than with taking into account some of the traditional relationships which have shaped exclusion. Little has been done to alter in a meaningful way the relationships between state administrators, elite village leadership, teachers and the poorer, low-caste groups within their communities (Subrahmanian 2000). Without an attempt to reorder these relationships through building alternative spaces and processes for hearing the perspectives of those excluded on what underpins their exclusion, what they feel about the education on offer, and how they see education fitting into their economic and social survival strategies, the right to education will have limited teeth for those who really would rely on it. Whilst many of these spaces are beginning to emerge in relation to education, far greater consolidation of these different actor groups is required through processes that enable excluded groups to develop and express voice. In this section, a brief assessment is made of the spaces and places within which participation in education takes place, is absent or needs to be strengthened.

At present, legal spaces for holding the state accountable to its version of student 'rights' provide one option. However, as discussed above, these spaces are in themselves insufficient to provide leverage, and further only recognise the rights of those already 'included'. Education 'guarantee' schemes, such as those in operation in Madhya Pradesh (and now a national commitment under the new 'umbrella' policy for universalising elementary education, the *Sarva Shiksha Abhiyan*), 'guarantee' schools in unserved areas that demand them, but again, the type of schools, their quality and content fall outside the scope of citizen action and are controlled solely by the state. With increasing levels of donor funding directed towards the state and the attempt to consolidate policy spaces under sector and sub-sector approaches, there is the risk of further crystallising the authority of the state over civil society and other organisations, and reducing transparency. While NGOs have been important innovators in education, especially in recent times, many of their 'models' are being absorbed directly into state programmes, without clear analysis of what it is these models offer and what insights they provide into developing localised education strategies based on community ownership. Even where 'community participation' is invoked, as it is increasingly in state programmes, there are insufficient attempts to address the foundational bases of inequality that prevent the most disadvantaged groups from expressing their views (see Subrahmanian, forthcoming). Village Education Committees (VECs), heralded as the new face of community participation in education, are often bureaucratised forms of citizen voice formed with a view to rounding children up and sending them to school rather than eliciting the views of parents on what education content and delivery should be (ibid.).

Panchayati Raj institutions (PRIs)⁶ offer a significant opportunity for strengthening citizen voice, even though they too may be subject to elite capture. As research in Karnataka has revealed, they can provide a strong counterpoint to the bureaucracy at sub-district level, and are the only local institutions capable of questioning and challenging administrative decisions that affect education delivery (Subrahmanian 2000). PRI members at district level engaged refreshingly with education delivery systems outside of the bureaucratic fixation with achieving ‘universal’ (read ‘quantitative targets’) education, and expressed much greater concern about the quality of teaching and the accountability of teachers, than did the bureaucrats interviewed. Local bureaucrats were in turn squeezed by an increasingly centralised policy agenda being delegated to district administration in the guise of ‘decentralisation’, which gave rise to warped incentives that curbed rather than encouraged innovation on their part, and made them far more risk-averse and cautious than they needed to be (ibid.). Thus microplanning initiatives became (despite their rhetoric) opportunities not for hearing and acting upon citizen voice, but for gathering information on out of school children. Interactions between bureaucrats and citizens then became the spaces where the former exhorted the latter to fulfil their ‘duties’ towards the state by sending children to school, rather than where they listened to the reasons that led citizens to stay out of schools, and tried to act upon them. This further underlies the policy preoccupation with boosting enrolment, and the view held by many that those outside of formal education are worthless ‘illiterates’.

Alternative spaces and processes that would enable people to express the complexity of the relationship between their social positions, their relationships with others within and outside their various social groupings, and the range of entitlements that collectively constitute their wellbeing, are necessary to move beyond narrow state-subject conceptions of ‘rights’. The role of social movements in this regard needs to be studied more closely. The anti-liquor struggle sparked off by a state-based literacy programme in Nellore, Andhra Pradesh, offers one famous example of how educational processes can unleash citizen voice, and highlights the linkages between poverty, denial of the right to education, gender inequality as well as other social issues (Shatrugna 1998). Velaskar’s (1998) account of the struggles of low caste protest movements in Maharashtra to establish rights to education illustrates sharply the importance of disadvantaged groups reclaiming education and reframing it from the standpoint of protest, emancipation and liberation. Her account equally illuminates the counter forces of co-option and the imposition of new, stigmatising identities that may arise from such processes of struggle, but nevertheless concludes by affirming their importance.

4. Conclusion

This paper has aimed to provide a set of reflections on what a rights based approach to education would need to take into account, based on some of the issues arising from recent shifts towards the language of rights in the Indian policy context. There seems to be an inherent contradiction between a rights-based approach and the increasing rise of unbridled privatisation, coupled with changing economic conditions and the continuing control of the state in determining what constitutes meaningful education. This links to the continuing dominance of the human capital approach to education, which views education solely in terms of individuals investing in their future productivity, and thus

⁶ The three-tiered local government system in India, with formations at village cluster, block and district levels.

isolates analysis of education from perspectives which see it as a resource or entitlement embedded in a wider range of entitlements and opportunities in the lives of people.

For the right to education to become 'real', much more work is required to reframe the existing provision to allow for diversity, difference and exclusion to be reflected in the understanding of 'universal education'. While civil society advocacy has done exceedingly well in opening up the vital space of 'rights' discourse in educational policy, many aspects of that discourse have been co-opted into pre-existing policy spaces which contradict wider understandings of what 'rights' mean. Vigilance against the imposition of narrowly framed conceptions of education can only be maintained and strengthened through the opening up of spaces for citizens, particularly those who are outside the education system, to express their views and perspectives on the nature and shape that education should take to realise their fullest aspirations and freedoms.

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